IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2931 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRUBEN WD/O. RAM AASHRE LALJI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2931 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenue, who is a lady detenue, has challenged her detention order

dated 6.2.2004 by which she is detained as a "bootlegger", under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about one criminal case, which is pending against the petitioner. The aforesaid case is registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in foreign liquor. The detaining authority, after recording subjective satisfaction and after recording the statements of the witnesses, whose names have not been disclosed to the petitioner, has detained her under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. Learned advocate for the petitioner submitted that, only one solitary case is registered against the petitioner under the Bombay Prohibition Act. It is submitted that, from the aforesaid case, it cannot be said that the activity of the petitioner is such which is injurious to public health or that she has violated any public order by committing offence under the Bombay Prohibition Act. To substantiate his say, the learned advocate for the petitioner has relied upon the decision of this Court in the case of Sandip Omprakash Gupta v. State of Gujarat reported in 2004(1) GLR 864 in which this Court has held that, on the basis of a solitary incident, resort to preventive detention cannot be made, as such solitary case can be considered as a violation of law and order on the part of detenu and not the public order.

4. Learned advocate for the petitioner has further submitted that, the petitioner is a widow, and by the solitary case registered against the petitioner, it cannot be said that the petitioner is a head strong person. However, in this case, it is not necessary to examine the second point urged by the petitioner, and since I am bound by the view taken by the learned Single Judge in the case of Sandip Omprakash Gupta (supra), in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, only on the basis of the aforesaid submission about the solitary case alleged against the petitioner, which can be taken care in the ordinary criminal law, this petition is required to be allowed.

5. In view of what is stated above, this petition is

allowed. The order of detention dated 6.2.2004 is quashed and set aside. The detenue, Niruben widow of Ram Aashre Lalji Chauhan, is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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